

Internal Revenue Service

Number: **201809001**

Release Date: 3/2/2018

Index Number: 9100.22-00, 992.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-116449-17

Date:

November 13, 2017

Legend

Taxpayer =

Opco =

Individual =

Law Firm =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This responds to your letter dated March 27, 2017, supplemented by the letter submitted by Law Firm on behalf of Taxpayer dated October 11, 2017, requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC") for Taxpayer's first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and its representatives and accompanied by affidavits and penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. It is subject to verification on examination.

FACTS

Taxpayer is a domestic corporation wholly owned by Opco that operates in connection with the export of agricultural implements manufactured by Opco. Opco is a limited partnership that is classified as a partnership for Federal tax purposes. Opco is in turn owned by Individual and by trusts for the benefit of Individual and his family, who are all

U.S. citizens and residents, directly and through two S corporations. Individual has been the CEO of Taxpayer throughout its existence and also the CEO of Opco for several years. Taxpayer's tax year is the calendar year.

Shortly before Date 1, Opco consulted with Law Firm about benefits that an IC-DISC may provide. Law Firm discussed requirements and technicalities of IC-DISCs with Opco. Opco engaged Law Firm to set up Taxpayer as an IC-DISC and prepare initial corporate and tax filings. Taxpayer was incorporated late in December, on Date 1. Taxpayer began operations the following year.

With the assistance of Law Firm, Taxpayer filed Form 4876-A, Election to be Treated as an Interest Charge DISC. Due to an error of Law Firm, the entries on the form stated that Taxpayer began doing business the day after Date 1 but requested that the election be effective as of Date 2, January 1 of its first full year. The form was dated as of Date 3, about two weeks after Date 2.

Later in the year of Date 2, the Service notified Taxpayer that the election was untimely. The Service notice letter noted that the due dates for Form 4876-A are different for existing and new corporations.

Taxpayer intended to be classified and to operate solely as an IC-DISC at all times. No opportunity or advantage was sought by initially requesting that the election be effective as of Date 2 rather than Date 1. Taxpayer consulted with Law Firm and requested a ruling granting an extension of time to file Form 4876-A effective as of Date 1.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Internal Revenue Code (the "Code") provides that an election by a corporation to be treated as a DISC¹ shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be

¹ As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Federal income tax returns for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Marissa K. Rensen
Senior Counsel, Branch 6
Office of Associate Chief Counsel (International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: